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Stephen Powers, Ruben Vidaurri

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KEITH A. WARREN,

Plaintiff,

vs.

NEVADA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

Case No. 3:17-cv-00228-MMD-WGC

**ORDER GRANTING MOTION FOR
EXTENSION OF TIME TO
RESPOND TO PLAINTIFF'S
"ORDER OF CONTEMPT"
(REQUEST NO. 2)
(ECF No. 110, 132, 142, and 143)
(ECF No. 160) AND
MOTION FOR ORDER TO SHOW
CAUSE (ECF No. 161)
(FIRST REQUEST)**

Defendants, Quentin Byrne, Sheryl Foster, Joshua Kelly, Stephen Powers, Ruben Vidaurri, by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, and Jeffrey A. Cogan, Deputy Attorney General, submits this Motion for Extension of Time to Respond Plaintiff Keith Allen Warren's "Order of Contempt of Court," (ECF No. 159) and Motion for Order to Show Cause (ECF No. 161).

MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL BACKGROUND

Plaintiff Keith Allen Warren (Warren) seeks an Order of Contempt (ECF 159) for allegations that Defendants' counsel failed to provide discovery previously ordered by this

1 Court. This Court set a hearing for February 17, 2021, at 1:30 p.m. to address Plaintiff's
2 Motion for Reconsideration re (ECF No. 154), Order (ECF No. 155), Motion to Add Evidence
3 (ECF no. 159), Motion for Order of Contempt of Court re discovery (ECF No. 160), Motion
4 to Show Cause (ECF 165) and Plaintiff's Motion for Order to Show Cause for TRO (ECF
5 No. 161). ECF 167 and ECF 171.

6 **II. BACKGROUND FACTS RELATING TO DEFENSE COUNSEL'S HEALTH**

7 On January 29, 2020, the undersigned, Deputy Attorney General Jeffrey A. Cogan,
8 suffered a heart attack diagnosed on January 30, 2020, by an EKG. After a stress test
9 and angiogram, the undersigned had triple bypass surgery on June 29, 2020.

10 Following the surgery, the undersigned was prescribed two anticoagulants: Clopidogrel,
11 commonly known as Plavix and Eliquis. Also prescribed was 81 mg aspirin, a blood
12 thinner.

13 Because of his diminished health, the undersigned closed his private practice of 28
14 years and obtained a job with the Office of the Attorney General, commencing on October
15 12, 2020, moving from Las Vegas, Nevada, to Reno, Nevada. On December 17, 2020, the
16 undersigned suffered a vitreous hemorrhage. On December 18, 2020, the undersigned saw
17 ophthalmologist Hardeep S. Dhinda, M.D., F.A.C.S., who scheduled surgery for December
18 21, 2020, to repair the bleeding eye blood vessels and retina.

19 However, on December 21, 2020, Dr. Dhinda determined that there needed
20 additional healing before performing surgery. Dr. Dhinda excused the undersigned from
21 work due to his inability to see well enough to read pleadings or a computer screen. Surgery
22 was continued to February 3, 2021. In the interim, the undersigned continued his work as
23 a deputy attorney general, including responding to discovery requests and motions in this
24 case. The undersigned's ability to perform his job duties was significantly reduced,
25 resulting from the loss of vision, requiring twice as long to perform any task.

26 On February 3, 2021, the undersigned saw Dr. Dhinda for the scheduled surgery,
27 but Dr. Dhinda determined that the trauma to the eye was too great to perform the surgery
28 and set the surgery for March 19, 2021. Dr. Dhinda signed a second note excusing the

undersigned from work until March 19, 2021. The undersigned desires to continue his work as a deputy attorney general but requires enlargement of time to respond to complicated matters such as Warren's motions.

III. LEGAL STANDARD

"For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires." Fed. R. Civ. P. 26(b). "The proper procedure, when additional time for any purpose is needed, is to present to the Court a timely request for an extension before the time fixed has expired (*i.e.*, a request presented before the time fixed for the purpose in question has expired).

Pickett v. Valdez, Case No. 3:17-cv-00567-MMD-WGC, 2019 WL 2570524, *2 (D. Nev. June 21, 2019) citing *Canup v. Miss. Valley Barge Line Co.*, 31 F.R.D. 282, 283 (D. Pa. 1962). The *Canup* Court explained that the "practicalities of life" (such as an attorney's "conflicting professional engagements" or personal commitments such as vacations, family activities, illnesses, or death) often necessitate an enlargement of time to comply with a court deadline. *Id.* Extensions of time "usually are granted upon a showing of good cause, if timely made." *Id.* citing *Creedon v. Taubman*, 8 F.R.D. 268, 269 (D. Ohio 1947). The good cause standard considers a party's diligence in seeking the continuance or extension. *See In re Western States Wholesale Natural Gas Antitrust Litigation*, 715 F.3d 716, 737 (9th Cir. 2013) citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

IV. ARGUMENT

The undersigned has not been intentionally dilatory in responding to Warren's discovery and the associated motions. The vitreous hemorrhage has made preparing discovery responses and pleadings much more difficult and consumes much more time. The undersigned is doing the best that he can in light of his illness and seeks additional time to respond to Warren's "Order for Contempt" (ECF No. 160) and Plaintiff's Motion for Order to Show Cause for TRO (ECF No. 161). The response to Warren's motions require charting what discovery was propounded, what responses were provided, case authority and legal analysis to rebut Warren's contentions, and legal argument.

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2 The undersigned is aware of the February 17, 2021, and does not desire to delay the
3 hearing. Therefore, Defendants respectfully request that the Court grant this Motion for
4 Extension of Time to February 8, 2021. This deadline would allow Warren to prepare and
5 file replies to Defendants' responses and provide the Court with sufficient time to review
6 all pleadings.

7 DATED this 3rd of February, 2021.

8 AARON D. FORD
9 Attorney General

10 By: /s/ Jeffrey A. Cogan
11 JEFFREY A. COGAN, Bar No. 4569
12 Deputy Attorney General
13 *Attorney for Defendants*

14 IT IS SO ORDERED.

15 DATED: February 4, 2021.

16 William G. Cobb
17 UNITED STATES MAGISTRATE JUDGE
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